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COMMISSION ON HUMAN RIGHTS
Forty-seventh session
Item 11 (a) of the provisional agenda

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Written statement submitted by World University Service on behalf of the Coalition against Impunity and its NGO members, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council Council resolution 1296 (XLIV).

[17 January 1991]

Written statement presented by World University Service on behalf of the Coalition against Impunity and its NGO members

1. World University Service is a founding member of the NGO Coalition against Impunity, a group concerned with the trend of granting pardons, applying amnesty laws or allowing de facto impunity to military violators of human rights. We have addressed on several occasions the Commission on Human Rights, its Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Working Group on Enforced or Involuntary Disappearances, and the United Nations Secretary-General, to solicit the United Nations bodies dealing with human rights issues to consider the phenomenon of impunity and to create guidelines for States and societies.

2. Unfortunately, only the Working Group has expressed its opinion on the matter. Last year, in its report to the forty-sixth session of the Commission on Human Rights, the Working Group stated:

> "Perhaps the single most important factor contributing to the phenomenon of disappearances may be that of impunity. The Working Group's experience over the past 10 years has confirmed the age-old adage that impunity breeds contempt for the law. Perpetrators of human rights violations, whether civilian or military, will become all the more brazen when they are not held accountable before a court of law."

3. Recently, the international community witnessed the anguished response of the Argentine people to the pardons given by President Carlos Menem of Argentina, first in 1989 to a large number of army officers and civilians who were prosecuted for gross violations of human rights, and then, on 30 December 1990, to former military leaders responsible for crimes against humanity. The trend of impunity continues, trampling upon justice and distorting reconciliation processes. The Commission on Human Rights must no longer ignore this phenomenon, but rather take measures to confront it.

4. Impunity means, literally, freedom from punishment. To act with impunity means to act with the knowledge that one is above the law. In Latin America, impunity has come to have a specific meaning in political and human rights terms. Impunity means there that acts of State terror and repression by military/security forces against their own people are shielded from judgement or accountability before national law. International lawyers argue that while the State, as the offended party, may forgive crimes against itself, it cannot unilaterally forgive crimes it committed as the offender against its own citizens. Another key principle in international law is the continuity of the State: a change in government does not change the binding nature of the State's international legal obligations. The amnesties passed to absolve Latin America's military and security forces violate one or both of these principles.

5. Examples of impunity in Latin America abound. Pinochet's national security State passed an amnesty law in 1978 which "forgot" all crimes committed by the military after 11 September 1973. Under the current civilian government, the Supreme Court recently upheld this amnesty. In 1979, a "reciprocal amnesty" was passed in Brazil. The result was to head off investigations of police and military human rights violations, which included extensive torture and abuse.

6. In 1986, after Uruguayan military officers were ordered to appear in court by civilian judges, the Congress shielded from prosecution all military and police personnel responsible for human rights violations. In 1987, under Duarte and in the context of tens of thousands of civilian murders, El Salvador passed a reciprocal amnesty which was widely recognized as primarily benefiting the military. By all accounts, human rights violations in El Salvador continued after 1987 on a very large scale, perpetrated by military and security forces, such as the assassination of six Jesuit priests and their workers in 1989.

7. In Argentina, President Alfonsín instituted the Punto Final law to cut off hundreds of new cases of human rights violations, and then the Due Obedience law after mutinies by a faction of the military. The Due Obedience law essentially exonerated hundreds of officers accused of human rights crimes. President Menem went even further by pardoning over 200 military officers in 1989, and in the words of the New York Times, with the pardon given on 30 December 1990, "has trashed his country's finest achievement of the last 60 years" [to restore the principle of equality under the law] (3 January 1991).

8. In Guatemala, the military issued Decree 8-86 (a self-amnesty) four days before civilian President Cerezo took office in 1986. Cerezo basically accepted this self-amnesty despite widespread outrage among Guatemalans. Today, at the end of Cerezo's term, the situation of human rights in Guatemala is far worse than it was when Decree 8-86 was passed. Military and security forces, defensive in 1986, have regained through impunity their might, perpetrating massacres, such as the ones in El Aguacate and Santiago Atitlan, carrying out extrajudicial executions by the thousands, and being responsible for hundreds of forced disappearances.

9. In Bolivia, Colombia and Peru, the civilian governments have failed to take decisive action on cases of human rights violations and systematic abuses, thus allowing de facto impunity for their powerful military forces.

10. In all these cases, impunity has been effected, whether through unilateral amnesties passed by the military to forgive itself, amnesty laws passed by civilian governments, de facto situations of impunity, pardons, or institutionalized "national security" constitutions and laws.

11. Proponents of amnesty and forgiveness put two main arguments forward. First, impunity is a necessary price for the transition to civilian rule. The military régimes would refuse to step down without guarantees of immunity from prosecution. Second, in fragile new civilian régimes, attempts to try military officers have a destructive and destabilizing effect. The military is likely to rebel, overthrow the civilian régime, and return the country to the dark days of repression. According to this argument, absolution is a means of pacifying the political situation and defusing social conflict, thus trading revenge and retribution for peace and democracy.

12. We, critics of impunity, on the other hand, charge that it allows no legal or moral recourse for societies that have suffered rule by terror under national security régimes. Societies are robbed of the means to condemn and reject systematic military atrocities against society itself; political expediency triumphs over requirements of justice. Crimes against humanity (extrajudicial execution, disappearances and torture) and war crimes condemned under international law (massacres, murdering captured prisoners, and bombings of civilian populations) are absolved by governmental élites (not the victims) in the name of reconciliation and democracy. A culture of fear persists, as many officers and individuals known to have committed crimes remain free, and

often in high-ranking positions. The fear remains that terror might recur. There is no price for abhorrent crimes; there is no deterrence to protect human rights and liberties in the future. The moral fabric of society is corroded.

13. We believe that impunity has concrete effects upon military consciousness as well. Military and security forces, secure in the knowledge that impunity exists, often continue to act against any perceived opposition in violent and lawless ways, especially in situations of economic crisis or political challenge. The military interprets impunity as tacit approval of its methods, justified by reasons of "national security", "the war against subversion", etc. Thus the military/security forces remain a State within the State, beyond the reaches of law and civilian control. A culture of repression persists.

14. On the national level, there is evidence that impunity does not promote reconciliation or democratization, but rather undermines the rule of law and constitutional structures, weakens civilian authority, and perpetuates social divisions. Impunity may have the opposite effect than desired by strengthening the military and encouraging increased perceptions of immunity, contempt for civilian rule, and self-righteousness. Basic principles of democracy, such as military subordination to civilians, due process, and equality under the law, are violated. Impunity allows the military institution to remain autonomous and above the law, a dominant political actor in society. International agreements and treaties such as the International Covenant on Civil and Political Rights, the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are ignored.

15. A final word on impunity. The pragmatic argument for impunity is based upon a notion of ends and means: the end of stable democracy depends on the means of impunity. Yet the means utilized to construct any system deeply shape its end. A society that silences cries for justice, and allows torturers and assassins to operate freely, is a society that faces a dubious future. A society that has been deeply scarred must come to terms with its past and settle accounts with its tormentors. The military régimes in Latin America ravaged societies as surely as did the Nazis. Societies aspiring to democracy and justice cannot be built upon a foundation of amorality, unpunished crimes, and official amnesia.

16. We urgently request the Commission on Human Rights to initiate a debate on the issue of impunity, with a view to its banning. We would very much like to see a resolution approved at this forty-seventh session and we are willing to contribute to its formulation. In any case, we call upon the Commission on Human Rights to take a decision at this session instructing the Sub-Commission on Prevention of Discrimination and Protection of Minorities to study the issue in depth and present proposals for the consideration of the Commission at its forty-eighth session.

Notes

(a) Members of the Steering Committee of the Coalition against Impunity are:

World University Service-U.S.
Service for Peace and Justice/SERPAJ
Federation of the Relatives of the Disappeared/FEDEFAM
International Association Against Torture
International League for the Rights and Liberation of Peoples, North American Chapter

Other members:

Guatemala Human Rights Commission, Mexico
Asamblea Permanente por los Derechos Humanos, Argentina
Centro de Documentacion e Informacion/CEDOIN, Bolivia
Centro de Estudios Legales y Sociales/CELS, Argentina
Co-ordination of Human Rights in Latin America, Australia
Grupo de Apoyo Mutuo/GAM, Guatemala
Centro de Investigaciones y Educacion Popular/CINEP, Colombia
Abuelas de Plaza de Mayo, Argentina

(b) This statement has drawn upon an article entitled "From National Security States to Militarized Civilian Governments: Confronting the Legacy of Repression" by J. Patrice McSherry.

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QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS

Written statement submitted by the Commission of the Churches on International Affairs (World Council of Churches), a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[30 November 1990]

Human Rights and International Financial Institutions

1. Member churches of the World Council of Churches have for a long time been concerned about the adverse consequences for basic human rights of certain policies and programmes of international financial institutions (IFIs). (This statement includes, for consideration, the International Monetary Fund (IMF) and the World Bank though comments would apply equally to regional financial institutions such as the Inter-American, Asian and African Development Banks.) We believe that the time has come for United Nations

human rights bodies to seriously explore ways and means by which human rights codified in the covenants on Economic and Social Rights and Civil and Political Rights can be recognized and incorporated into decision-making by IFIs. In putting forward this idea the World Council of Churches reaffirms its long held position that the rights elaborated in the two covenants are indivisible and must be taken together in any policy-setting, programme planning, and evaluation activities. This point was elaborated in the WCC oral statement on debt and human rights to the forty-fifth session of the Commission on Human Rights.

2. International human rights standards must be taken into account by IFIs if long-term practical human rights protection and promotion are to be ensured. Furthermore, it can be argued that the application of human rights criteria will increase not only the fairness but also the effectiveness of IFI policies and programmes.

3. The actions of IFIs affect human rights conditions in borrower countries in a variety of ways. Yet only in certain instances of gross systematic human rights abuse have human rights been given any consideration when loans and investments are being made. There is therefore a need to institutionalize the systematic review of human rights considerations within IFIs. One means to accomplish this would be the establishment of human rights offices within IFIs. These offices could review policies, programmes and projects for their likely effect on human rights observance. They could also advise on the extent to which detrimental impacts on human rights might effect the overall success of a proposed initiative, as well as on the reciprocal relationship between human rights observance and economic development. This kind of review is consistent with the mandates and objectives of the IFIs, would enhance their development work and would promote the practical implementation of the Covenant on Economic, Social, Cultural Rights and the Covenant on Civil and Political Rights.

4. The IFIs are designed to assist economic growth using financial structures and discipline similar to that of private financial institutions. However, IFIs have a wider purpose and responsibility to overcome market deficiences by allocating capital to enhance structural development and overall economic and social welfare. Thus, the degree of concessionality present in loans, the emphasis on economic development goals rather than simply the financial rate of return of projects, and the technical assistance made available to borrowers, underscore the wider role of IFIs.

5. Consistent with this purpose, the IFIs have been supportive of economic development as a broadly defined right, recognizing that sustainable development does not occur in a vacuum separate from the many social, cultural and other factors existing in the countries in which the programmes operate. The decision to lend money involves a wide variety of considerations, including a country's rate of growth, natural resources, political stability and others. The IFIs also have properly focused on basic needs; fostering projects which have as a primary goal not simply narrowly defined economic development. The Women in Development initiative by the World Bank is noteworthy in this context.

6. Thus, IFI activities recognize that in approaching the difficult task of economic development, the conditions under which citizens live are relevant, and often critical, to the ultimate success and sustainability of a particular programme. This is also true for human rights. According to the General Counsel to the World Bank:

> Civil rights are also basic to human development and happiness. No balanced development can be achieved, in any view, without the realization of a minimum degree of all human rights, material or otherwise, in an environment that allows each people to preserve their culture while continuously improving their living standards. This suggests that the [World] Bank should be concerned with the broad effect of its loans on the welfare of the beneficiary individuals. Human Rights violations in specific cases also have broader implications related to the country's stability and prospective creditworthiness or to its ability to supervise them, which obviously are factors that the Bank must take into account to the extent they prove relevant in the circumstances of a specific case. 1/

7. It is true that the staff and directors of IFIs are instructed to base decisions systematically on economic considerations. Nonetheless, the proposal to take into account systematically human rights in the IFIs is consistent with this and other legal criteria governing activities of these institutions. 2/ The consideration of human rights factors as part of the pre-project review process is not only within IFIs' respective mandates but helpful in achieving their goals. In making economic and financial judgements as to the creditworthiness of the borrower, the general stability of the country, the likelihood of repayment of the loan, and the merits and ultimate success or sustainability of the proposed project, human rights conditions need to be assessed and weighed.

8. Human rights considerations should therefore be institutionalized within each of the IFIs, in a manner analogous to, for example, environmental impact analyses; with the results of the human rights review considered in a broader context of other lending objectives. The manner in which IFI staff would incorporate the results of a human rights review into the overall IFI decision-making process presents difficult issues. However, in the absence of an organizational capability to collect and analyse relevant information, and its human rights implications, no informed decisions can be made.

9. In the light of the concerns raised in this statement we welcome the excellent reports of the Special Rapporteur, Mr. Danilo Türk; especially those parts of the reports which address the activities of IFIs. We trust that the issues raised in his reports, plus those raised in this paper and others will encourage further consideration and action on human rights and IFIs by United Nations human rights bodies.

Notes

1/ Ibrahim F.I. Shihata, Vice President and General Counsel of the World Bank, in "The World Bank and Human Rights", The Bank's World, at 15 February 1988.

2/ Section 10 of Article 4 of the World Bank Articles of Agreement states: "The Bank and its officers shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions and these considerations shall be weighed impartially in order to achieve the purposes stated in Article 1." Similiar clauses are included in other IFI charters, e.g., Inter-American Development Bank, Article V, Section 6. However, the new European Bank for Reconstruction and Development (EBRD) departs from this model. For example, in the preamble to EBRD Articles of Agreement, the contracting parties welcome "the intent of the Central and Eastern European countries to further the practical implementation of multiparty democracy, strengthening democratic institutions, the rule of law and respect for human rights and their willingness to implement reforms in order to evolve towards market-oriented economies."

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COMMISSION ON HUMAN RIGHTS
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Item 19 of the provisional agenda

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-SECOND SESSION

Written statement submitted by Four Directions Council, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[7 January 1991]

INTERNATIONAL YEAR FOR THE WORLD'S INDIGENOUS PEOPLE

1. In its resolution 45/164 of 18 December 1990, the General Assembly decided to proclaim 1993 the International Year for the World's Indigenous People, and invited indigenous organizations to consider the contributions they can make to the success of the Year, with a view to presenting these contributions to the Commission on Human Rights. We are pleased to submit the following recommendations for the programme of activities for the Year, on behalf of our constituent indigenous peoples in North America.

2. We endorse the general approach taken by Mr. Eide and Mrs. Mbonu in their working paper on possible United Nations activities for an International Year for Indigenous Rights (E/CN.4/Sub.2/1990/41), and welcome the decision of the Sub-Commission, in its resolution 1990/29 of 31 August 1990, that this could provide a useful framework for the preparation of the programme of activities for the Year.

3. We believe that the programme for the Year should concentrate on the operational side of the United Nations, with priority being given to projects benefiting indigenous peoples in developing countries.

4. United Nations bodies and specialized agencies should focus their contributions to the Year on improving the quality of their existing operational activities, wherever they affect indigenous peoples. This should include the following three elements:

(a) Popular participation - involving indigenous people directly in the planning and implementation of projects which may affect them; 1/

(b) Demonstration projects - funding a small number of special projects in 1993 which address the needs and concerns of indigenous people, giving priority to projects involving appropriate, environmentally-sound and sustainable development;

(c) Impact assessment - preparing guidelines and procedures designed to ensure respect for the rights of indigenous peoples, and for the integrity of their environments, in the planning and execution of future projects. 2/

5. The programme of activities for the Year should have a lasting impact on programme delivery. It should result in changes in the way the United Nations itself, and its Member States, work with indigenous people and address indigenous peoples' concerns. We believe this can be achieved most effectively by concentrating available resources on a small number of well-conceived, concrete projects involving a small number of indigenous communities in different countries and regions, which can provide a baseline of practical experience for improving the quality of future national and international development activities.

6. Priority should be given to activities benefiting the largest and most vulnerable concentrations of indigenous people in the developing countries. Indigenous peoples in industrialized countries should be included, as far as possible, as partners in these activities, and as contributors of technical and human resources. This could involve:

(a) Establishing networks of indigenous organizations and communities for the sharing of information and experience in particular fields such as primary health care, bilingual education and forestry;

(b) Pairing indigenous communities from developing and industrialized countries in the planning and implementation of specific projects, with the aim of promoting an exchange of resources and expertise, and building longer-term working partnerships;

(c) Contracting or secondment of indigenous persons and organizations with relevant expertise, to carry out projects for the benefit of indigenous communities elsewhere in the world. 3/

7. Responsibility for co-ordinating activities for the Year should be shared by the Department for International Economic Co-operation and the Centre for Human Rights. This will ensure an appropriate balance between the aims of the Year (the realization of indigenous peoples' rights) and the means for achieving these aims (improving the quality of operational activities).

Each participating United Nations body and specialized agency should be requested to designate an appropriate professional staff member by January 1992 to serve as its focal point for the Year. Direct involvement of indigenous peoples' organizations in planning and co-ordination will be essential, and the focal point within each participating body and agency should arrange consultations with indigenous organizations as early as possible in 1992.

8. Participating United Nations body and specialized agencies should be encouraged to set aside a portion of their 1993 operational funds, for projects that advance the aims of the Year. Funds from voluntary contributions made in accordance with paragraph 6 of General Assembly resolution 45/164 should be allocated among United Nations bodies and agencies in proportion to the size of their commitments of internal financial resources to projects connected with the Year ("matching" on a proportional basis). Governments, in turn, should be encouraged to supplement, to the extent possible, the United Nations funding of the projects carried out in their countries.

9. We have prepared a list of United Nations bodies and agencies that we believe could make the most important contributions to the success of the Year (see annex), indicating for each one of them some possible areas of operational emphasis. In addition, we believe that important roles can be played by a number of regional organizations, especially the Organization of American States; the Inter-American Indian Institute; the Commission for Indigenous Affairs established under the Treaty for Amazonian Co-operation; and, because of the comparable history of Africa, and the African region's experience in grass-roots development and protection of the environment, the Economic Commission for Africa and the Organization for African Unity. 4/

10. At its present session, the Commission should consider adopting a framework of basic principles for planning the programme of activities for the Year. In particular the Commission should:

(a) Reaffirm the operational focus of the Year, as recommended in the working paper prepared for the Sub-Commission by Mr. Eide and Mrs. Mbonu;

(b) Recommend that the planning and implementation of the programme of activities for the Year be co-ordinated jointly by the Department for International Economic Co-operation and the Centre for Human Rights;

(c) Invite relevant United Nations bodies and specialized agencies to circulate notes verbales to indigenous peoples' organizations, with a view to soliciting proposals for a small number of high-quality, high-impact projects in their respective fields of competence;

(d) Invite the Working Group on Indigenous Populations to consider the contributions it should make to the success of the Year;

(e) Invite Mr. Eide and Mrs. Mbonu to continue their consideration of possible United Nations activities for the Year in accordance with Sub-Commission resolution 1990/29;

(f) Reaffirm the central and indispensable role which should be played by indigenous peoples' organizations themselves in the planning and execution of the programme of activities for the Year.

Notes

1/ On participation in operational activities, see General Assembly resolution 44/211 of 22 December 1989, para. 6; United Nations Development Programme Governing Council decision 90/18 of 22 June 1990; and, with reference to indigenous peoples, resolution I of 27 June 1989 of the seventy-fifth International Labour Conference. Participation is stressed in the working paper prepared by Mr. Eide and Mrs. Mbonu, E/CN.4/Sub.2/1990/41, paras. 24 and 29.

2/ See General Comment No. 2 of the Committee on Economic, Social and Cultural Rights (E/1990/23, annex III) and para. 190 of the report of the Global Consultation on the Right to Development as a Human Right (E/CN.4/1990/9/Rev.1).

3/ See para. 9 of the draft programme of activities for the Year prepared by Mr. Eide and Mrs. Mbonu, E/CN.4/Sub.2/1990/41, annex II.

4/ See para. 7 of the draft programme of activities for the Year prepared by Mr. Eide and Mrs. Mbonu, E/CN.4/Sub.2/1990/41, annex II.

Annex

Suggested areas of operational emphasis for the International Year for the World's Indigenous People

United Nations bodies

Department for International Economic and Social Affairs (DIESA)

- Mechanisms for collecting data on indigenous peoples, and for including this information in future editions of the World Social Situation (through the Statistical Office).

United Nations Centre for Human Settlements (HABITAT)

- Alternative housing designs, appropriate to indigenous peoples' environments and cultures, utilizing readily-available materials and labour.

United Nations Centre for Social Development

- Strengthening and obtaining recognition for indigenous systems of social control and criminal justice.

- Strengthening indigenous families, including extended and other forms of traditional families, with a view also to contributing to the International Year of the Family (1994).

United Nations Centre on Transnational Corporations (UNCTC)

- Continuing and expanding the collection of information on the impacts of transnational investments and operations on the lands of indigenous peoples (see Sub-Commission resolution 1990/27).

- Research and training on the management of foreign investment, and marketing of indigenous peoples' resources and products.

United Nations Children's Fund (UNICEF)

- Building community programmes for culturally-appropriate child protection services and substitute care.

- Addressing the cultural concerns of indigenous peoples in the implementation of the Convention on the Rights of the Child.

United Nations Development Programme (UNDP)

- Developing guidelines and procedures for assessing the impacts of United Nations operational activities on indigenous peoples.

- Building networks of indigenous women in different parts of the world (through UNIFEM).

- Documenting, evaluating, and where appropriate strengthening indigenous peoples' traditional methods of population management (through UNFPA).

United Nations Environment Programme (UNEP)

- Documenting and strengthening indigenous peoples' traditional methods of managing ecosystems and living resources.

- Effective participation of indigenous people in the 1992 United Nations Conference on Environment and Development (UNCED).

Specialized agencies

Food and Agriculture Organization (FAO)

- Integrating indigenous peoples' knowledge of ecosystems into the sustainable management of forests, fisheries and farmland.

- Strengthening indigenous communities' training and capacity for environmental research and resource management.

International Fund for Agricultural Development (IFAD)

- Appropriate and environmentally-sound modernization of fishing, farming, and other traditional subsistence economies.

- Evaluating and improving nutrition in communities affected by recent changes in their means of subsistence.

International Labour Organisation (ILO)

- Educating indigenous peoples about ILO Convention No. 169, and promoting its widespread ratification and implementation.

- Community initiatives for appropriate and environmentally-sound rural development, employment and the empowerment of indigenous women (see resolution I, seventy-fifth International Labour Conference).

United Nations Educational, Scientific and Cultural Organization (UNESCO)

- Developing improved materials and methods for the bilingual and bicultural education of indigenous children.

- Developing and promoting appropriate forms of primary science education for indigenous communities.

- Locating, recovering and conserving cultural property (see Sub-Commission resolution 1990/25).

World Health Organization (WHO)

- Integrating traditional medicine into local and national health care systems.

- Strengthening the capacity of indigenous communities to provide primary health care and emergency care.

World Intellectual Property Organization (WIPO)

- Community-level training in the effective use of international intellectual property law (Sub-Commission resolution 1990/27).

- Documenting and obtaining protection for traditional indigenous arts, and for their knowledge of ecosystems and plant varieties.

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ORGANIZATION OF THE WORK OF THE SESSION

Written statement submitted by Amnesty International, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[January 1991]

THE HUMAN RIGHTS SITUATION IN GUATEMALA

1. Abuses in Guatemala intensified as November elections approached to replace President Vinicio Cerezo Arévalo, who took office in 1986, the country's first elected civilian president in almost 20 years. Regrettably, his administration had done little to investigate abuses committed under previous military governments or to bring those responsible to justice. After a brief initial decrease, reports of torture, "disappearances" and political killings escalated throughout his administration.

2. Throughout 1990 human rights workers and others pressing for inquiries into past violations were particularly vulnerable to attack by military personnel and their civilian agents. Other victims included villagers who refused to serve in the ostensibly voluntary civil patrols; people resident

in or displaced to areas believed sympathetic to or controlled by the armed opposition; representatives to the National Dialogue consultative process set up under the 1987 Central American Peace Agreement; academics and students; trade unionists; street children; journalists and politicians.

3. Some victims were shot outright by security force personnel acting either in uniform or in plain clothes in the guise of the so-called "death squads". Others were abducted and their bodies found later, often badly tortured or mutilated to obscure identification. Others remain "disappeared".

4. Few official personnel have been charged for abuses even in cases where evidence clearly indicates their involvement, for example, in the rare cases where victims survived abductions. No findings are known regarding the case of Diana Ortiz, a United States nun, kidnapped and tortured in November 1989. Officials eventually retracted claims that she had arranged her own kidnapping and in April 1990 promised an inquiry after pressure from United States religious organizations. In January 1990, Socialist International leader Salvadorian Héctor Oquelí Colindres and Gilda Flores, a Guatemalan lawyer, were abducted and apparently extrajudicially executed. Both the Guatemalan and Salvadorian governments announted inquiries but neither produced any significant findings.

5. In the one known case in recent years where official agents were found guilty on a human rights-related charge, the policemen involved were released by a 1990 appeal court decision which overturned their conviction for the 1987 kidnapping and murder of two Quetzaltenango agronomy students.

6. Abuses were reported in the context of the continuing insurgency and the Government and military periodically charged that the armed opposition tortured and murdered, although details of individual cases are rarely conclusive. In one highly publicized case, that of the killing of some 23 peasants in El Aguacate, Chimaltenango in 1988, evidence to support such allegations contrasted with the findings of respected local and international human rights groups who have alleged military responsibility.

7. In December 1990, soldiers opened fire on a crowd of some 1,500 to 2,000 peasants, killing 15, including 3 children, and wounding 19 others, including children. The peasants had converged on a military base in Sololá to protest an earlier attack on villagers by soldiers from the base. Military spokesmen initially claimed that the villagers had provoked the attack, but survivors testified that the peasants had been unarmed. Officials later announced the arrest of two soldiers. In view of repeated failures to charge and convict military personnel even when evidence appeared to point clearly to their responsibility, Amnesty International believes that the composition, terms of reference and findings of any inquiries into this incident must be monitored internationally.

8. Throughout 1990 abuses continued against members of the Consejo de Comunidades Etnicas-Runujel Junam (CERJ), an organization which protects the rights of Guatemala's indigenous peoples. At least two of its members "disappeared" and some seven others were apparent victims of extrajudicial executions. Several of these victims had been pressing for inquiries into abuses against relatives or for exhumation of family members buried in clandestine cemeteries during earlier army counter-insurgency campaigns.

9. Attacks were also reported on CERJ supporters attempting to escort villagers home after they fled when threatened with death because they opposed enforced service in the nominally voluntary civil patrols. In El Quiché department in March, Assistant Human Rights Procurator César Alvarez Guadamuz was himself injured as he accompanied a group of would-be returnees who were threatened and assaulted by approximately 25 armed men, some believed to be soldiers in plain clothes, other civil patrollers acting under their orders. In October, the Assistant Procurator was again assaulted by a group, including civil patrollers in similar circumstances.

10. Leaders and members of the Grupo de Apoyo Mutuo (GAM), the group of relatives of "disappeared" persons, continued to be targeted. In March, a GAM delegation travelling to El Quiché to support villagers threatened for refusing the join civil patrols was attacked by patrollers, reportedly on army orders. In July, the home of the mother of the group's president was fired on; the bullets were reportedly the same as those used by the security forces. In August, the president's eight-year-old daughter received telephoned death threats against herself and GAM leaders. The sister-in-law of the director of the human rights centre known as CIEPRODH continued to be intimidated; she had protested after four armed men in plain clothes held a gun to her two-year-old child's head in July 1989, saying he would be killed if her brother-in-law did not stop his human rights work.

11. In September 1990, María Tiu Tojín and her month-old daughter "disappeared" after they were taken into custody by the military together with peasants who had fled their community during the army counter-insurgency campaigns of the early 1980s, since when they had lived in areas not controlled by the military. Such displaced persons and those who publicize their often desperate economic and health conditions have been frequent targets of abuse. The same month, internationally-known anthropologist Myrna Mack, who had been researching communities formed by these displaced persons, died after a particularly brutal "death squad"-style attack. In May, Luis Miguel Solís Pajarito, representative to the National Dialogue of the displaced peoples association (CONDEG), "disappeared". He had been followed and had earlier evaded a kidnapping attempt.

12. In June, a group of armed men, whom witnesses identified as military, entered Pacoc, El Quiché, and ordered the two deputy mayors to arrest 15 people denounced by civil patrollers as "subversive". Most were members of CONAVIGUA, a group campaigning for compensation for widows of those killed by the army and for exhumation of their husbands' bodies from clandestine cemeteries. Those whose arrest was ordered included Juana Calachij, who had survived two kidnapping attempts in 1988 after she reported a clandestine cemetery where she said her husband and four other peasants had been buried after being killed by the local civil patrol. When the two deputy mayors refused to co-operate in carrying out the arrests, they were reportedly threatened with abduction.

13. In February, Dr. Carmen Angélica Valenzuela, professor at the University of San Carlos (USAC) and president of the Guatemalan Association of Women Doctors, survived "disappearance" when she was released from military custody following an international outcry on her behalf, and went into exile. She had been abducted, in the presence of witnesses, by armed men and was tortured in custody. In March, four people, three of whom were reportedly USAC law students, were abducted by armed men driving a van with polarized windows, as

customarily used by the security forces. The victims had been collecting for an annual student demonstration, satirizing current political events. The bodies of three, bearing apparent signs of torture, were eventually recovered from a cemetery where they had been buried in anonymous graves.

14. Brothers Carlos Enrique and Tyron Francisco Sagastume, unionists at the Guatemala City Coca-Cola bottling plant, were found dead showing apparent marks of torture in February. Their union has been a long-term target of abuse.

15. One of 14 street children known to have been extrajudicially executed by Guatemala City police since March 1990 was thirteen-year-old Nahamán Carmona López. Attacked on 4 March, he died ten days later of multiple injuries, including a ruptured liver, six fractured ribs, two broken fingers and severe bruising to 70 per cent of his body. In June, after pressure from children's and international organizations, four policemen were arrested, but numerous irregularities have been reported in the proceedings against them. Street children who testified to the attack have been repeatedly assaulted and intimidated, apparently by other policemen. In June, eight street children "disappeared" in two separate incidents. Three of their bodies were subsequently found with their eyes gouged out and ears and tongues cut off, treatment customarily meted out by police to informers. The police have not actively pursued inquiries and claim they were not involved.

16. In December, a street worker with Covenant House, an organization aiding street children and denouncing abuses against them, evaded a kidnapping attempt. He may have been targeted because he had given testimony crucial in bringing charges against a Treasury Police agent for an attack on three street children.

17. During 1990, Amnesty International has repeatedly made public its concerns about continuing human rights violations in Guatemala and the absence of effective investigations. It considers that the United Nations Commission on Human Rights should act decisively to help prevent the continuation of human rights violations by encouraging the new Government to take immediate steps to stop the occurrence of these violations and to investigate past abuses and by carefully monitoring the human rights situation.

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Agenda item 12

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the Inter-Parliamentary Union,*
a non-governmental organization with consultative status
(Category I)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[30 January 1991]

1. The defence of parliamentarians' rights is one of the priorities of the Inter-Parliamentary Union. Indeed, it considers that it is "the necessary prerequisite to enable them to protect and promote human rights and fundamental freedoms in their respective countries, and that, in addition, the representative nature of a Parliament closely depends on the respect of the rights of the members of that Parliament".

2. Thus, since 1 January 1977, it deals with concrete situations thanks to a procedure for the examination and treatment of communications concerning violations of the human rights of parliamentarians.

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*/ One hundred and thirteen national Parliaments are currently represented within the Inter-Parliamentary Union, which also has two Associate Members.

3. Persons seeking detailed information concerning the characteristics and functioning of this procedure may refer to document E/CN.4/1989/NGO/10 presented at the forty-fifth session of the United Nations Commission on Human Rights in 1989, and to the article by the Secretary-General of the Inter-Parliamentary Union which appeared in the 89/1 issue of the Human Rights Bulletin published by the United Nations Centre for Human Rights.

4. For reference, it may merely be recalled that a Committee on the Human Rights of Parliamentarians, made up of five parliamentarians, investigates complaints confidentially on the basis of stringent juridical criteria. This Committee meets in camera four times a year and presents to the Inter-Parliamentary Council, on the occasion of that body's two annual sessions, a public report accompanied by recommendations for action on all cases for which it has not been possible to reach a satisfactory settlement within a reasonable period of time in the context of the confidential procedure. The cases brought to the attention of the Inter-Parliamentary Council are the subject of resolutions to the application of which the member Parliaments of the Union contribute. A file is only closed when the Committee or, in the case of a situation examined publicly, the Inter-Parliamentary Council considers that the case has been settled satisfactorily or that it does not warrant any further action by the Union.

5. For information, it may be noted that only complaints from certain sources (among other criteria) are considered and that the Committee is competent with regard to national parliamentarians whose rights have been affected, either as parliamentarians or as individuals. The Committee will meet again from 4 to 7 March, then from 27 April to 2 May 1991.

6. In 1990, the Committee brought to the attention of the Inter-Parliamentary Council 23 cases in 6 countries; the Council took decisions on these cases and it was possible to close some files during the year. The following only covers situations which have given rise to a public procedure, it being understood that other cases have been or are being examined confidentially.

(a) Two cases in Chile

7. These concern two members of the Chilean Congress, dissolved in 1973, */ Mr. Carlos Lorca Tobar and Mr. Vicente Atencio Cortés, who disappeared in 1975 and 1976 respectively, following their arrest in the presence of witnesses, by plainclothes police officials.

8. On 30 March 1990, the remains of Vicente Atencio Cortés, bearing marks of torture, were dug up (along with those of two other detainees who had disappeared) at a secret collective grave located on the property of "Las Tortolas in Colina", which had belonged to the army up until 1980. The Chamber of Deputies paid tribute to the memory of Deputy Atencio Cortés, whose remains were recovered by the family and buried, at the same time as those of other "disappeared persons", at an official funeral. The Inter-Parliamentary Council has confirmed its opinion that Deputy Atencio Cortés had been the

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*/ Chile once again has a National Congress, which resumed its place within the Inter-Parliamentary Union in October 1990.

victim of political repression under the régime of General Pinochet, and it has considered that the official tribute paid to his memory tends to show, without prejudice to the ruling to be reached by the competent court, that that was already accepted as an established fact by the Chilean State. It has keenly hoped that the inquiries being carried out would make it possible to identify those responsible for the arrest of Deputy Atencio Cortés, his detention, the ill-treatment he suffered and his death, and has noted that a penal complaint had been lodged with the 19th Criminal Chamber of Santiago.

9. The Council has recalled that article 9 (5) of the International Covenant on Civil and Political Rights stipulates that "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation", and considered that, quite apart from the criminal proceedings, the State of Chile was bound to grant compensation to the relatives of Deputy Atencio Cortés. It has also hoped that, beyond such moral reparation as might be decided, the Committee on Human Rights, Citizenship and Nationality of the Chilean Chamber of Deputies would be able to facilitate the rapid granting to the family of Deputy Atencio Cortés of the material compensation to which it was entitled. The file was closed.

10. With regard to Deputy Carlos Lorca Tobar, the Council has noted that, despite existing testimonies concerning his arrest, his detention in secret locations under the authority of DINA (in particular Villa Grimaldi and Colonia Dignidad) and the ill-treatment inflicted on him, and despite the testimonies of persons directly involved in these violations of human rights (one of whom was assassinated), the fate that befell him has not been fully established.

11. In respect of the criminal action brought on the subject of the illegal detention and forced disappearance of Carlos Lorca Tobar and 69 other persons, the Supreme Court of Chile ruled on 28 September 1990 that the Decree-Law on Amnesty (No. 2191) was constitutional; the Council has noted with great concern that that decision has the effect of closing or, as the case might be, preventing any criminal proceedings against "persons who, as author, accomplice or receiver, have taken part in criminal acts such as the forced disappearance of persons and the use of torture throughout the state of siege, that is, between 11 September 1973 and 10 March 1978", */ and of absolving them of any responsibility even before the examination of existing evidence, thus weakening respect for the rule of law.

12. The Council has firmly reiterated that, regardless of that decision and its effects, it is the legitimate right of the relatives of victims to know what has become of the "disappeared" persons, to recover their remains in the event of death and to obtain reparation, including the payment of adequate material compensation. It has hoped that the fate which had befallen Deputy Carlos Lorca Tobar would be quickly determined and has requested the Committee on the Human Rights of Parliamentarians to continue studying the case and to report to it at its one hundred and forty-eighth session (29 April - 4 May 1991).

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*/ Article one of the operative part of the decree.

(b) Five cases in Colombia

13. Two members of the Senate, Mr. Pedro Nel Jiménez Obando and Mr. Pedro Luis Valencia, were assassinated on 1 September 1966 and 14 August 1987, respectively; two members of the House of Representatives, Mr. Leonardo Posada Pedraza and Mr. Octavio Vargas Cuellar, were assassinated on 30 August and 15 December 1986, respectively; and lastly, an elected member of the Senate and a candidate for the office of President of the Republic, Mr. Bernardo Jaramillo Ossa, was assassinated on 22 March 1990. All were members of the Patriotic Union Party. Some 15 other members of the Colombian National Congress, who belonged to this party or to other formations, have sadly been murdered in recent years, and a great many parliamentarians feel threatened, but in the particular case of the five parliamentarians, the Committee was seized of a complaint that they had been victims of extrajudicial executions perpetrated by groups which might be operating on the authority or with the complicity of certain sectors of the Colombian Armed Forces.

14. At its session in October 1990, the Inter-Parliamentary Council deeply deplored the fact that, after months and in some instances years, the investigations had not been successful in any of the five assassinations (as in that of the 15 other murdered parliamentarians), despite the existence of testimonies and material evidence. It deplored those horrifying assassinations and those that are continuing to take place, which profoundly affect the Colombian National Congress and the entire international parliamentary community, and whose repetition with total impunity is a serious threat both to parliamentarians and to those whom they represent. It recommended urgently to the President of the Colombian Republic and his Government that they apply measures to rectify the situation in order that parliamentary democracy might so function as to protect and enhance the rights of citizens. It invited the Colombian judiciary to do everything in its power to establish responsibilities and punish the culprits. It also invited the National Congress of Colombia to use all its influence to this end by such means as it might deem appropriate. The member Parliaments of the Union were invited to enter into contact with the Colombian authorities. A new report would be made to the Council in May 1991.

(c) Two cases in Guinea-Bissau

15. Two members of the People's National Assembly, Mr. Lamine Cisse and Mr. Buota Nam Batcha, were both found guilty of crimes against State security. It would appear that they were stripped of their parliamentary mandates even before they were tried and found guilty, a procedure which is contrary to the rules of law. Following a trial before the High Military Court which reportedly did not fully meet international standards of a fair trial, they were sentenced to death and to 15 years' imprisonment, respectively. After commutation of the death sentence, both were transferred to a rehabilitation centre located on an island of the Bijagós Archipelago where they were obliged to perform "productive social work" to serve their 15-year prison sentences. In September 1989, the President of the People's National Assembly of Guinea-Bissau affirmed that the two former parliamentarians had been granted amnesty; he specified that they were living in the country with their families and leading normal lives, and said that they were in good health. However, an independent and reliable source has stated that Mr. Buota Nam Batcha died in prison in July 1986 of a serious

illness following inadequate medical care, and that Mr. Lamine Cisse's freedom continued to be restricted. In order to shed light on this contradiction, the Council has hoped that an on-site mission could be carried out, but this has not yet been possible. A report will be made to the Council in May 1991.

(d) One case in Honduras

16. Mr. Miguel Angel Pavón Salazar, a member of the National Congress and an active member of the Honduran Committee for the Defence of Human Rights (CODEH), was assassinated on 14 January 1988. He was killed shortly after having given evidence before the Inter-American Court of Human Rights in a case concerning four disappearances in Honduras between 1981 and 1984, and it is alleged that he was the victim of an extrajudicial execution perpetrated by members of the Intelligence Service of the Honduran Armed Forces.

17. Despite the asserted concern of the Honduran authorities to shed all possible light on this case, after nearly three years, the investigations have not been successful although there exist testimonies and material evidence. The Inter-Parliamentary Council has therefore urgently invited the executive and the judiciary in Honduras to do everything possible to shed full light on the murder of Deputy Pavón Salazar as soon as possible, establish responsibilities and punish the culprits. It has also invited the National Congress of Honduras (which is a member of the Union) to use all its influence to this end by such means as it may deem appropriate and has invited the Union's member Parliaments as a whole to enter into contact with the Honduran authorities in this connection. A new report will be presented to the Council in May 1991.

(e) Twelve cases in Sudan

18. Mr. Sadiq al-Mahdi (Umma Party, former Prime Minister) and Mr. Mohamed Ibrahim Nougoud (Secretary-General of the Sudanese Communist Party, now dissolved), were arrested on 30 June 1989 and were released on 10 January and 10 February 1990, respectively. However, both were immediately placed under house arrest in very strict conditions. Their present state of health is said to be very worrying. The Inter-Parliamentary Council has declared itself seriously concerned about all the information available to it regarding the situation of Mr. al-Mahdi and Mr. Nougoud, considering that it tends to suggest that these two figures are victims of political persecution. It has requested that all necessary medical care might be provided for them urgently and has invited the Sudanese authorities to lift the ministerial measures restricting their freedom, drawing their attention once more to the principle enshrined in the international human rights instruments to which Sudan is a party, namely, that any person arrested must be either formally charged and tried in a reasonable lapse of time, with guarantees for a fair trial, or be released forthwith. This appeal does not seem to have been heard.

19. Al-Hadj Abdalla Abdelrahman Nagdalla (Umma Party, former Minister of Religious Affairs) was arrested on 30 June 1989, and Mr. Bashir Omar Fadlalla (Umma Party, former Minister of Finance, former Minister of Information and former Minister of Energy and Mining) was arrested on 30 June 1989, then released and rearrested on 10 June 1990. They are still in detention at Kober Prison, Khartoum, and are undergoing interrogations. The Council has drawn the attention of the Sudanese authorities to the provisions of articles 9 and 10 of the International Covenant on Civil and Political Rights and to

those of article 6 of the African Charter on Human and Peoples' Rights (two international juridical instruments to which Sudan is a party).

20. The Council is also concerned about Mr. Osmane Omar Al-Sharif (Democratic Unionist Party, former Minister of Justice and former Public Prosecutor) and Mr. Ismail Abakar (Umma Party, former Minister for Housing and Cattle Rearing), who were tried on charges of corruption and sentenced to heavy prison terms by a martial-law court: it has been alleged that not all guarantees for a fair trial were given and fears have been voiced concerning their state of health.

21. Another former parliamentarian, Mr. Mohamed Tahir Gailani, was released on bail after a prolonged detention on 19 April 1990 and tried on charges of corruption. The Council has invited Sudan to ensure that the guarantees for a fair trial as set out in article 14 of the International Covenant on Civil and Political Rights and article 7 of the African Charter on Human and Peoples' Rights are respected, and has expressed the hope that the Committee on the Human Rights of Parliamentarians might follow developments of his trial.

22. With regard to parliamentarians on trial, it may be noted that the Inter-Parliamentary Union does not in any way question the fact that parliamentarians or former parliamentarians may be subjected to judicial proceedings, but is concerned that such proceedings comply with principles of equity.

23. For all of the above-mentioned cases, the Council has invited the Union's member Parliaments to enter into contact with the Sudanese authorities and to envisage on-site visits. A new report will be made to the Committee in May 1991.

24. Lastly, the Council has closed the files concerning Mr. Mohamed Othman Al-Mirghani (Head of the Democratic Unionist Party, now dissolved), Omar Nour Al-Dayem (former Minister of Finance and Economic Planning), Yhanis Yor Akol (Southern African Congress, also dissolved, former spokesman of the Union of Southern African Parties), Farouk Ahmad Adam (Democratic Unionist Party), and Mr. Mansour Yousif Elagab, who were unconditionally released following several months of detention without charge or trial at Kober Prison, Khartoum.

(f) One case in Turkey

25. For several years, the Council has been examining cases of former parliamentarians on trial for activities carried out in the framework of the Turkish Peace Committee, an organization which enjoyed legal existence prior to the unconstitutional dissolution of the Turkish Parliament on 12 September 1980 (this body was re-established in 1983 and is a member of the Union). It is continuing to study the case of Mr. Erol Saracoglu who might be obliged to serve a prison term if the sentence handed down against him in April 1987 is upheld by the Military Court of Appeals. The Council has noted that the judicial proceedings are based on a collective rather than an individual concept of criminal responsibility and on a posteriori legal nature of acts and opinions which did not give rise to proceedings prior to the dissolution of the Turkish Peace Committee. A new report will be made to the Council in May 1991.